

PDO20105.TXT

176

1 *Teran - Direct*

2 *COMM. VINAL: Show it to the witness.*

3 *Q Do you recognize what I'm showing you?*

4 *A Yes.*

5 *Q What is it?*

6 *A A printout of the E-ZPass usage for*
7 *Department Vehicle 169.*

8 *Q Is that a fair and accurate*
9 *representation of the printout that you received from*
10 *Captain - I'm sorry, what was his name?*

11 *A Mavricos.*

12 *Q Mavricos?*

13 *A Yes, it is.*

14 *Q Did you use that printout as part of*
15 *your investigation?*

16 *A Yes.*

17 *MS. BAPTISTE: At this time, I ask that*
18 *the E-ZPass records be entered into evidence as*

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19 *Department's Exhibit No. 5.*

20 *COMM. VINAL: The date of November 28,*

21 *2003?*

22 *MS. BAPTISTE: Yes.*

23 *COMM. VINAL: Voir dire, Mr. Karasyk?*

24 *MR. KARASYK: Yes.*

25 *VOIR DIRE EXAMINATION*

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1 *Teran - Voir Dire*

2 *BY MR. KARASYK:*

3 *Q The document you have in your hand, is*
4 *that what you received from Captain Mavricos?*

5 *A Yes.*

6 *Q It does not have any heading on it in*
7 *any way, shape or form, does it?*

8 *A No.*

9 *Q It doesn't say what it is?*

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10 A No.

11 Q Do you know where this document came
12 from? Do you know who generated this document?

13 A No, I don't.

14 Q You have no idea who printed this
15 document up, do you?

16 A No.

17 Q You don't know if it came from E-ZPass,
18 or it was just printed on a computer printer, do you?
19 Yes or no?

20 A What is your question?

21 Q Do you know whether this document was
22 received from E-ZPass, or just printed on a printer?

23 Are there any identifying marks on this
24 document that say it came from E-ZPass, the official
25 E-ZPass records?

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1 *Teran - Voir Dire*

2 *A It's a Department vehicle, Department*
3 *E-ZPass.*

4 *Q I'm not asking you that.*

5 *I'm asking about the document, the piece*
6 *of paper that you are holding.*

7 *A It's not from E-ZPass.*

8 *Q You don't have any idea where this*
9 *information came from that is on this document, do*
10 *you?*

11 *MS. BAPTISTE: Objection. The witness*
12 *already testified that he knows exactly where it*
13 *came from.*

14 *MR. KARASYK: This is –*

15 *COMM. VINAL: One second.*

16 *The question is the pedigree of the*
17 *document, where the information on it originated*
18 *from, from E-ZPass, or through some other source.*

19 *Q Do you know where the information for*
20 *this document came from?*

21 *A A Department computer.*

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22 Q *Were you present when it was printed?*

23 A *No.*

24 Q *Were you present when it was obtained?*

25 A *No.*

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1 *Teran - Voir Dire*

2 Q *Your testimony is this document came*
3 *from a Department computer; is that what you are*
4 *testifying to?*

5 A *Yes.*

6 Q *And where did the information from this*
7 *document, contained in this document, from that*
8 *Department computer, come from?*

9 A *I don't understand the question.*

10 Q *How did the Department computer get that*
11 *information; do you have any idea?*

12 A *No.*

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13 *Q You just know that this is a blank sheet*
14 *of paper, with no heading on it, no date as to when*
15 *it was generated, or where it was generated from, and*
16 *you know it came from a Department computer; is that*
17 *correct?*

18 *A Yes. Captain Mavricos, the day of his*
19 *Patrol Guide hearing –*

20 *Q Gave it to you?*

21 *A Yes.*

22 *Q Said, "Here is the E-ZPass thing"?*

23 *A Yes.*

24 *Q You have no idea how he got it, where he*
25 *got it, and what the basis of the information printed*

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1 *Teran - Voir Dire*

2 *on this document came from?*

3 *A You are asking three different*

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4 questions.

5 Are you asking me what the document –

6 Q Do you have any idea where Mavricos got
7 it from?

8 A No.

9 Q Do you have any idea where the
10 information written on this document came from?

11 A From a computer.

12 Q Okay.

13 Do you have any information where that
14 computer got the information from?

15 A No.

16 Q No idea?

17 A I can't answer that. I don't know.

18 Q The sum total of this document is that
19 Mavricos gave this blank sheet of paper to you and
20 said, "Here is the E-ZPass record"; is that correct?

21 A Yes.

22 MR. KARASYK: Objection.

23 There is no foundation whatsoever laid
24 for this document.

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25 COMM. VINAL: Ms. Baptiste?

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2 MS. BAPTISTE: Again, your Honor,
3 Commissioner, it is clear that this investigator
4 was made clear of the specific date, September 7,
5 2004, the same date the Respondent had his
6 official interview, that the Captain, as part of
7 the investigative team investigating Detective
8 Dones, was the one who went and obtained from a
9 specific group that handled the printouts of
10 Department E-ZPass records, Captain Mavricos
11 obtained that information as part of an
12 investigative team –
13 MR. KARASYK: Counsel is testifying
14 here. Counsel is testifying. The testimony
15 doesn't come from counsel.

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16 *COMM. VINAL: It's all argument.*

17 *Go ahead, finish your argument.*

18 *MS. BAPTISTE: The testimony that has*
19 *already been given indicates that the Sergeant*
20 *received that information from the Captain. He*
21 *indicated the date.*

22 *He indicated that he relied on that*
23 *information as part of an investigative team with*
24 *Captain Mavricos.*

25 *Again, your Honor, as part of an*

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2 *investigative team, one investigator is allowed*
3 *to rely on the investigative procedures and steps*
4 *of another member of the team.*

5 *He outlined exactly what he did in*
6 *obtaining that information.*

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7 *He relied on the information given to*
8 *him about the document from Captain Mavricos that*
9 *these were the E-ZPass records from the car*
10 *assigned to Detective Dones and Detective*
11 *Clohessy.*

12 *He can rely on that information, when*
13 *the date was obtained, and where it came from.*

14 *COMM. VINAL: You are offering these*
15 *records. He stated that he got it from the*
16 *Captain, Captain Mavricos.*

17 *The Department is offering this document*
18 *for the truth of what is in the document, that*
19 *these entries are accurate with regard to Car 169*
20 *and where the E-ZPass in that car was used?*

21 *MS. BAPTISTE: Yes.*

22 *COMM. VINAL: Is that correct?*

23 *MS. BAPTISTE: Yes.*

24 *COMM. VINAL: As you are aware, E-ZPass*
25 *is not a departmental arm, correct?*

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2 MS. BAPTISTE: Yes.

3 COMM. VINAL: Apparently – and I say

4 "apparently" based on the witness' testimony

5 here – in terms of where he got this printout,

6 that the Car Coordinator on Hudson Street had

7 some ability to access E-ZPass records and come

8 up with a computer printout.

9 MS. BAPTISTE: Yes.

10 COMM. VINAL: We don't know how that is

11 done. The witness doesn't know how it's done.

12 MS. BAPTISTE: He doesn't have

13 information about that.

14 COMM. VINAL: That is our problem here.

15 When an E-ZPass – and I think this is

16 common knowledge – is in a car, and the car goes

17 through a toll booth of some type, a computer

18 record, an electronic record, is thereupon

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19 *created that that car went through that E-ZPass*

20 *toll at a certain date, certain time.*

21 *What we are missing here is the*

22 *communication from E-ZPass to the Department in*

23 *terms of the Car Coordinator at Hudson Street*

24 *that you are referring to, how this record is*

25 *generated, whether it reflects E-ZPass records*

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2 *that are generated to the Department.*

3 *I would rule differently if it had on*

4 *the top "E-ZPass," the plate number, and all the*

5 *information indicating dates, and tolls and such,*

6 *that would indicate that this is an official*

7 *E-ZPass business record.*

8 *We don't have it.*

9 *This is a departmental record that the*

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10 *witness says he is looking at. I don't know how*
11 *that record was created from E-ZPass records.*

12 *We have a chain of custody, so to speak*
13 *here, in terms of from E-ZPass in some manner to*
14 *the Car Coordinator, I assume this is the*
15 *Internal Affairs overall Car Coordinator.*

16 *THE WITNESS: Yes.*

17 *COMM. VINAL: This person is in charge*
18 *of the fleets, so to speak?*

19 *THE WITNESS: Yes.*

20 *COMM. VINAL: And in some manner, the*
21 *Car Coordinator generates a printout that*
22 *reflects E-ZPass usage of cars assigned to IAB.*
23 *We don't know how that occurs.*

24 *The witness indicated that.*

25 *We have E-ZPass to the Car Coordinator,*

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2 *to the Captain, and then through the witness.*
3 *I have no problem with a departmental*
4 *record. E-ZPass is an outside agency.*
5 *At this point, no proper foundation has*
6 *been laid for the admissibility of this record in*
7 *evidence, and I will afford the Department an*
8 *opportunity to call a witness to so testify,*
9 *perhaps the Car Coordinator.*
10 *Do you know who that is?*
11 *Can you attach a name to that person?*
12 *THE WITNESS: I believe it's Paul –*
13 *John Corr.*
14 *COMM. VINAL: Perhaps that individual*
15 *can enlighten us as to how this document is*
16 *created.*
17 *We have to establish that it accurately*
18 *reflects the actual E-ZPass usage based on*
19 *E-ZPass information. They are the ones who take*
20 *the information from E-ZPass.*
21 *At this point, I'm not going to allow*

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22 *the document into evidence.*

23 *There is no proper foundation for the*

24 *reliability of the record.*

25 *You can proceed to ask the witness*

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Q

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1 *Teran - Direct*

2 *further questions.*

3 *CONTINUED DIRECT EXAMINATION*

4 *BY MS. BAPTISTE:*

5 *Q Turning your attention to July 8, 2004,*

6 *were you present for an interview of the Respondent,*

7 *Detective Dones, by Federal Agent Kenneth F. Hosey?*

8 *A Yes.*

9 *Q Where did that interview occur?*

10 *A Within the confines of the 46th*

11 *Precinct. I believe it's 1859 Loring Place, Bronx,*

12 *New York, in front of Detective Dones' residence.*

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13 *Q Who organized and made the decision to*
14 *interview Detective Dones that way at his home?*

15 *A Special Agent Hosey was conducting the*
16 *interview. That's where he decided to do the*
17 *interview, at his residence.*

18 *Q He was the one in charge, he is the one*
19 *who orchestrated the interview, correct?*

20 *A Yes.*

21 *Q Who else was present during the*
22 *interview?*

23 *COMM. VINAL: Let's start with how the*
24 *people got there.*

25 *We are moving to the interview, as*

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1 *Teran - Direct*
2 *opposed to the planning for the interview.*
3 *Q Were you privy to the decision, or*

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4 planning on how to interview him at his home?

5 A To the best of my recollection, Special
6 Agent Hosey stated, on such and such a date we are
7 going to interview Detective Lissander Dones at his
8 residence.

9 Q So a decision had been made to go
10 interview him, and then you were informed?

11 A Yes.

12 Q Do you not understand the question?

13 A I'm not getting it.

14 We are working as a team, it's a team
15 effort, you know.

16 COMM. VINAL: Was there a specific need
17 regarding Hosey's proposal to conduct this
18 interview?

19 THE WITNESS: I don't know.

20 If you would, the Agent would get in
21 contact with me and tell me we are going to
22 interview this person today.

23 Q Is that what happened?

24 A Yes.

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25 *Q Federal Agent Hosey contacted you and*

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1 *Teran - Direct*

2 told you when they were going to interview him?

3 *A Yes.*

4 *Q He also was the one who told you where*

5 they were going to interview him?

6 *A Yes.*

7 *Q So Hosey came up with the plan and*

8 informed you of it?

9 *A Yes, if you want to call it that.*

10 *It was a plan, a decision that was made*

11 by Special Agent Hosey to interview Detective Dones

12 on that specific date, and at his residence.

13 *Q And after that decision was made, was*

14 there any other conversation or planning prior to

15 actually going to the interview with Federal Agent

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16 *Hosey? Did you have another conversation with him?*

17 *A We would meet him there.*

18 *Q Okay.*

19 *A We would meet him there, at Detective*
20 *Dones' residence.*

21 *Q So who was present on July 8, 2004, for*
22 *the interview of Detective Dones?*

23 *A Captain Scollan, Lieutenant Mejia,*
24 *Sergeant Morton, Special Agent Hosey, and myself.*

25 *Q Approximately what time did you get to*

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1 *Teran - Direct*

2 *Detective Dones' address?*

3 *A It was early in the morning. The exact*
4 *time, I don't recall the exact time.*

5 *Q Can you approximate the time?*

6 *A 6:00. 6:00 in the morning, 6:30 in the*

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7 morning.

*8 Q At that time, was there any plan or
9 intention of arresting Detective Dones?*

10 A No.

*11 Q Was Detective Dones in custody at the
12 time the interview took place?*

13 A No.

*14 Q Describe in detail the conversation that
15 occurred.*

*16 A Special Agent Hosey was conducting the
17 interview, was the primary interviewer on this.*

*18 I stood alongside Special Agent Hosey,
19 and we were speaking with Detective Dones, and just
20 asking him questions regarding his contact with
21 Detective Louis NievesDiaz.*

*22 Q And what, if anything, did he indicate
23 about his contact with Detective Louis NievesDiaz?*

*24 A He had stated that he had spoken with
25 Detective Louis NievesDiaz about the incident*

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1 Teran - Direct

2 involving the arrest of Julio Vasquez.

3 Q Did he indicate whether he knew that
4 NievesDiaz was a member of the Internal Affairs
5 Bureau?

6 A No.

7 He acknowledged that he wasn't. Louis
8 Nieves isn't part of IAB.

9 Q Just to clarify this, Detective Dones
10 clarified that who wasn't a member of the Internal
11 Affairs Bureau?

12 A That Louis NievesDiaz was not.

13 Q Right.

14 And did Detective Dones make any
15 statements regarding accessing the computer?

16 A Yes.

17 Q What, if anything, did he specifically
18 say about accessing the computer system, and why?

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19 A *I recall him stating that he did access*
20 *the computer system regarding the incident involving*
21 *Julio Vasquez, and that he did it out of curiosity.*

22 Q *What, if anything, did he say about*
23 *giving him computer access code to anyone, or whether*
24 *someone had accessed the information under his code?*

25 A *I recall him saying that no, no one was*

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1 Teran - Direct
2 *privy to that information, and that no, he didn't*
3 *give that information out to anyone.*

4 Q *When you say privy to that information,*
5 *you are talking about his computer code?*

6 A *Yes.*

7 Q *What, if anything, did he state about*
8 *his involvement in the Vasquez case; meaning did he*
9 *know he was involved in the case, in an*

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10 investigation?

11 COMM. VINAL: I have allowed answers

12 without questions.

13 What was the question?

14 Did he observe Special Agent Hosey or

15 anyone else ask the Respondent?

16 This was not tape-recorded?

17 THE WITNESS: No it wasn't.

18 Q If you recall, what questions was

19 Federal Agent Hosey asking Detective Dones?

20 A The exact question?

21 Q A summary of the questions that he

22 asked.

23 A Regarding his connection with Julio

24 Vasquez?

25 Q Yes.

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1 *Teran - Direct*

2 *A I believe that they worked together.*

3 *I believe that Detective Vasquez*

4 *trained – Dones stated that he had trained him.*

5 *Q That was one of the things that you*

6 *learned from the interview?*

7 *A Yes.*

8 *Q Did Dones indicate – at that time, did*

9 *he indicate that he was on duty at the time he*

10 *accessed the computer?*

11 *COMM. VINAL: Answers make sense in the*

12 *context of questions.*

13 *I haven't heard you ask what question*

14 *was asked –*

15 *THE WITNESS: Can I refresh my*

16 *recollection?*

17 *COMM. VINAL: One second.*

18 *That is why I interjected myself.*

19 *You haven't asked the witness once what*

20 *question was asked, just what the Respondent*

21 *said.*

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22 *If he volunteered something without a*
23 *question being asked, the witness can testify to*
24 *that, too.*
25 *I need a context.*

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1 *Teran - Direct*
2 *You did not ask what questions were*
3 *asked.*
4 *Q Is there anything that can refresh your*
5 *recollection as to what questions were asked by –*
6 *COMM. VINAL: Let me interject one*
7 *second.*
8 *As you sit here today, do you have a*
9 *present recollection of this interview?*
10 *THE WITNESS: Yes.*
11 *COMM. VINAL: Okay.*
12 *You can testify from your present*

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13 *recollection.*

14 *If you need to have it refreshed, we can*

15 *do that, too.*

16 *THE WITNESS: Can I have it refreshed?*

17 *COMM. VINAL: Yes.*

18 *This is what we will do.*

19 *There is still cross-examination to go,*

20 *further testimony.*

21 *I think it makes the best sense to*

22 *adjourn at this point in time. He can review the*

23 *statement, and we can begin testimony on it*

24 *tomorrow morning, unless counsel objects.*

25 *MR. KARASYK: Commissioner, I would just*

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1 *Teran - Direct*

2 *ask, if the witness has indicated that he wishes*

3 *to refresh his recollection, I ask whatever he is*

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4 *going to use to refresh his recollection, he let*

5 *us see now.*

6 *If it's something different that I don't*

7 *have, that will be discoverable, I would like to*

8 *see it.*

9 *If it is no more than – I don't know*

10 *what it is.*

11 *COMM. VINAL: You have a document there?*

12 *MR. KARASYK: A group of documents?*

13 *COMM. VINAL: What were you going to use*

14 *to refresh your recollection?*

15 *THE WITNESS: Whatever discovery I*

16 *turned over to counsel.*

17 *I believe it was the interview.*

18 *COMM. VINAL: Did you prepare a report*

19 *regarding this interview ?*

20 *THE WITNESS: No.*

21 *COMM. VINAL: Who did?*

22 *THE WITNESS: Special Agent Hosey.*

23 *COMM. VINAL: Did anyone from this*

24 *department prepare any report regarding this*

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25 *interview?*

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1 *Teran - Direct*

2 *THE WITNESS: No.*

3 *COMM. VINAL: Any notes taken by anyone*

4 *at the interview, or after the interview?*

5 *THE WITNESS: No.*

6 *COMM. VINAL: Informal notes?*

7 *THE WITNESS: No.*

8 *COMM. VINAL: Any members of the service*

9 *who were present?*

10 *THE WITNESS: No.*

11 *COMM. VINAL: Any members of the service*

12 *who were present in front of the Respondent's*

13 *house?*

14 *THE WITNESS: No.*

15 *COMM. VINAL: Is there any Department*

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16 *record at all that this interview took place?*

17 *THE WITNESS: No.*

18 *COMM. VINAL: I guess what I'm really*
19 *asking is, since this was an investigative event,*
20 *clearly, was someone supposed to prepare*
21 *something to indicate this had happened, memo*
22 *book entries, activity log entries, or the IAB*
23 *equivalent of activity logs that this event took*
24 *place in front of the Respondent's presence?*

25 *THE WITNESS: No.*

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1 *Teran - Direct*

2 *The reason behind this was we were*
3 *conducting a joint investigation with the FBI,*
4 *and Special Agent Hosey was in charge of*
5 *conducting the interviews and producing the*
6 *paperwork relative to the interviews, and that is*

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7 *why we were told not to –*

8 *COMM. VINAL: The FBI was requesting*
9 *that the Department not create paperwork, since*
10 *they were conducting an investigation?*

11 *THE WITNESS: The United States District*
12 *Attorney's Office, it was in the FBI's hands to*
13 *conduct the investigation, and they were in*
14 *charge of it.*

15 *BY MS. BAPTISTE:*

16 *Q Did someone memorialize this interview?*

17 *A Yes.*

18 *Q Who memorialized this interview in some*
19 *way?*

20 *A Special Agent Hosey.*

21 *COMM. VINAL: Other than that, are you*
22 *aware of any other record memorializing the*
23 *interview?*

24 *THE WITNESS: No.*

25 *COMM. VINAL: The witness indicated he*

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2 *will read Special Agent Hosey's report.*

3 *Did you receive that?*

4 *MR. KARASYK: Yes.*

5 *COMM. VINAL: I think we should break*

6 *for him to read it, and give the Assistant*

7 *Advocate the opportunity to possibly contact, as*

8 *indicated earlier, the fact that the exhibit*

9 *offered as Department's 5 for identification, the*

10 *E-ZPass records, as they were referred to*

11 *regarding Vehicle 169, are not in evidence.*

12 *I want to afford the Advocate an*

13 *opportunity, if possible, to get another witness*

14 *to put those documents in evidence.*

15 *It makes the most sense to break at this*

16 *point in time.*

17 *As Mr. Karasyk requested, he is aware of*

18 *the only document that is going to be reviewed*

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19 *regarding this interview, Special Agent Hosey's*
20 *report.*

21 *THE WITNESS: Yes.*

22 *Commissioner, if I may?*

23 *COMM. VINAL: Yes.*

24 *THE WITNESS: From what I remember of*
25 *the interviews, basic information that Hosey was*

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2 *asking him, "How do you know this guy, Louis*
3 *NievesDiaz? Were you contacted" –*
4 *COMM. VINAL: You indicated that you*
5 *have a recollection of this event occurring. You*
6 *can testify to your present recollection.*
7 *You can use his report to help refresh*
8 *your present recollection as to the questions*
9 *asked, and the answers given by the Respondent in*

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10 *the course of that particular interview.*

11 *You have not had an opportunity to do*

12 *that, I gather?*

13 *THE WITNESS: What is that?*

14 *COMM. VINAL: Have you had an*

15 *opportunity to interview Special Agent Hosey's*

16 *report recently?*

17 *THE WITNESS: Recently?*

18 *COMM. VINAL: Yes.*

19 *THE WITNESS: I looked at it.*

20 *I don't want to basically say something*

21 *that might be wrong.*

22 *If I can look at it, to just refresh my*

23 *recollection, it would be great.*

24 *I can also testify to the best of my*

25 *knowledge of what I remember.*

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2 *COMM. VINAL: I will afford you an*
3 *opportunity to have an opportunity to review it.*

4 *Ms. Baptiste, after this witness is*
5 *concluded, are you going to call any other*
6 *witnesses?*

7 *MS. BAPTISTE: Just the Car Coordinator.*

8 *COMM. VINAL: Apart from that witness?*

9 *MS. BAPTISTE: No.*

10 *COMM. VINAL: Mr. Karasyk, you have*
11 *witnesses to call, I believe, in addition to the*
12 *Respondent?*

13 *MR. KARASYK: Just the Respondent.*

14 *COMM. VINAL: Okay.*

15 *Why don't we adjourn at this point until*
16 *tomorrow morning at 10:00 a.m.*

17 *MS. BAPTISTE: Thank you.*

18 *MR. KARASYK: Thank you.*

19 *(Time noted: 4:00 o'clock p.m.)*

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WITNESS: MICHAEL CLOHESSY

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VOIR

EXAMINED BY DIR. CROSS REDIR. RECR. DIRE

5

Ms. Baptiste 8 38

6

Mr. Karasyk 21 44

7

8 WITNESS: GREGORY GARLAND

VOIR

9 EXAMINED BY DIR. CROSS REDIR. RECR. DIRE

10 Ms. Baptiste 49

11 Mr. Karasyk 57

12

WITNESS: DONALD P. MOUNTS

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VOIR

EXAMINED BY DIR. CROSS REDIR. RECR. DIRE

14

Ms. Baptiste 67 101

15

Mr. Karasyk 92 107

16

17 WITNESS: FRANCIS TERAN

VOIR

18 EXAMINED BY DIR. CROSS REDIR. RECR. DIRE

19 Ms. Baptiste 125

161

20 186

21 Mr. Karasyk

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<i>6</i>	<i>2</i>	<i>Usage log</i>	<i>89</i>	
<i>7</i>	<i>3</i>	<i>Phone records</i>	<i>140</i>	
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2 *C E R T I F I C A T E*

3

4 *I, STEVEN KLEIN, a Notary Public of the State*

5 *of New York, do hereby certify:*

6 *That the testimony in the within proceeding*

7 *was held before me at the aforesaid time and place;*

8 *That said witness was duly sworn before the*

9 *commencement of the testimony, and that the testimony*

10 *was stenographically taken by me, then transcribed*

11 *under my supervision, and that the within transcript*

12 *is a true record of the testimony of said witness.*

13 *I further certify that I am not related to any*

14 *of the parties to this action by blood or marriage,*

15 *that I am not interested directly or indirectly in*

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16 the matter in controversy, nor am I in the employ of

17 any of the counsel.

18 IN WITNESS WHEREOF, I have hereunto set my

19 hand this day of , 2005.

20

21

STEVEN KLEIN

22

23

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